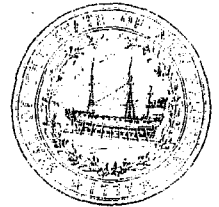




The State of New Hampshire  
**Department of Environmental Services**



**Michael P. Nolin**  
Commissioner

Vol/Page: 2814/1319  
Doc# 616749  
Date: 08/26/2005  
Time: 10:35AM

Mr. Robert Cavacco, Sr.  
Hillcrest Campground  
78 Dover Road  
Chichester, NH 03234

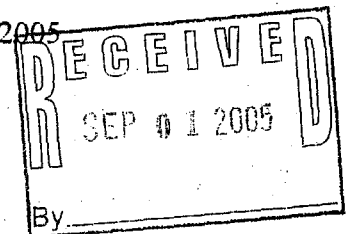
Town of Chichester  
54 Main Street  
Chichester, NH 03258

Re: Unregistered Dam on Marsh Pond  
Chichester, NH

**Book 2814 Page 1319**

**ADMINISTRATIVE ORDER  
No. WD 05-022**

August 24, 2005



**A. INTRODUCTION**

This Administrative Order is issued by the Department of Environmental Services, Water Division to Mr. Robert Cavacco, Sr., and the Town of Chichester pursuant to RSA 482:5, RSA 482:12 and RSA 482:87. This Administrative Order is effective upon issuance.

**B. PARTIES**

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, New Hampshire.
2. Mr. Robert Cavacco, Sr. is an individual having a mailing address of 78 Dover Road, Chichester, New Hampshire 03234
3. The Town of Chichester ("the Town") is a duly constituted municipality the town offices for which have a mailing address of 54 Main Street, Chichester, New Hampshire 03258

**C. STATEMENTS OF FACTS AND LAW**

1. Pursuant to RSA 482, DES regulates the construction and maintenance of dams so as to meet the stated statutory objectives, including the regulation of water levels, the lessening of flood damage, and the enhancement of public safety. Pursuant to RSA 482:87, the Commissioner of DES has adopted New Hampshire Admin. Rules Env-Wr 100-700 to implement this program.
2. RSA 482:5 requires that the owner of a non-permitted existing dam shall submit an application for a permit for such a dam to DES.
3. RSA 482:11-a requires the owner of a dam to maintain and repair the dam so that it does not become in disrepair.

4. Mr. Robert Cavacco, Sr., is co-owner of a dam located on Marsh Pond ("Marsh Pond Dam") further identified on Property Map 4, Lot 3 and Lot 156 on the plan entitled "Property Survey prepared for Land Conservation Investment Program, Citizens Task Force, Chichester, NH 03263" by B. G. Miller Associates, Civil Engineers, dated August 1, 1989. Mr. Robert Cavacco, Sr., is further identified as co-owner of the Dam in a warranty deed recorded in Merrimack County Registry of Deeds, Book 2503, Page 274.

5. The Town of Chichester is co-owner of Marsh Pond Dam. The Town of Chichester is further identified as partial co-owner of the Dam in a warranty deed recorded in Merrimack County Registry of Deeds, Book 1836, Page 1272.

6. RSA 482:12 requires DES to periodically inspect all dams in the state which may pose a menace to public safety, and to take action to ensure that the dam is repaired or reconstructed if the inspection indicates that the public safety so requires.

7. RSA 482:2, V, defines a "dam in disrepair" as a dam which is a menace to public safety and is incapable of safely impounding flood waters to its crest, or is incapable of maintaining a reasonably constant level of waters impounded or which does not contain adequate gates and sluiceways to provide for the holding or controlled discharge of waters impounded.

8. Env-Wr 101.21 defines "menace to public safety" as any dam, the failure of which would threaten life or property. Property, when used in this context, means buildings, structures or other real estate.

9. Env-Wr 101.03(b) defines "Class AA Structure" as a dam with no hazard potential, the failure of which would not threaten life or property.

10. Env-Wr 101.04(a) defines "Class A Structure" as a dam with a low hazard potential, the failure of which would not result in possible loss of life as defined by Env-Wr 101.29, would result in minimal economic loss and would result in major damage to a town or city road.

11. Env-Wr 101.29 defines "Possible Loss of Life" as the risk posed by water levels rising to the foundation but below the first floor elevation of a habitable structure during a dam breach.

12. DES believes that the Marsh Pond Dam, if it were to fail, would cause damage to a downstream driveway crossing and to Cross Road, a town road. The potential damage would meet the criteria set forth in Env-Wr 101.04(a).

13. In accordance with Env-Wr 301.03, and because the Marsh Pond Dam does not meet the criteria of Env-Wr 101.03(b), DES has classified the dam as a Class A, low hazard potential structure.

14. In September 2004, Mr. Richard DeBold, Chichester Selectman, contacted the Dam Bureau in regards to the partial failure of the dam on Marsh Pond in Chichester, which damaged Cross Road and a private driveway. The Marsh Pond Dam was not registered with the Dam Bureau at the time of the initial contact. On September 15, 2004, DES inspected the dam and downstream reach with Mr. DeBold. Mr. DeBold was informed on that day that the structure in question was a dam in accordance with RSA 482:2 II. The Marsh Pond Dam was approximately 6 feet high, in poor condition and constructed with sandbags augmented by beaver debris. The following deficiencies were noted at the September 15, 2004, inspection and as a result of additional investigation:

- a. There is no proper outlet structure to safely convey flows from the dam.
- b. There are many trees growing on the crest of the dam, along the downstream embankment and within 10 feet of the downstream toe of the embankment.
- c. There is a defined channel along the left downstream toe of the dam indicating that the dam was regularly overtopped prior to the inspection. It was also noted that overtopping had occurred recently, as evidenced by small plant growth leaning in the direction of the downstream toe of the dam on the left embankment.
- d. The primary overflow section of the dam is composed of sand bags and beaver debris. The primary overflow section shows signs of erosion and instability.
- e. The hydrologic analysis indicates that the dam would overtop due to a 100-year, 24-hour storm event.
- f. There is no operation and maintenance plan associated with the dam.

15. On October 5, 2004, a letter was drafted and sent to Mr. Cavacco indicating that that the Marsh Pond Dam would be classified as a low-hazard dam and that significant repairs would be required to return the dam to a safe operating condition.

16. The Town was sent a similar letter on October 5, 2004. Both Mr. Cavacco and the Town were given 30 days to submit an application to register the dam.

17. In December of 2004, the Town, lowered Marsh Pond approximately 18 inches, by removing some debris from the main outflow section, due to concerns for liability and public safety associated with the Marsh Pond Dam.

18. On February 24, 2005, Mr. Cavacco and the Town were sent a second letter referencing the previous letter dated October 5, 2004, and given an additional 30 days to submit an application to register the dam. As of the date of this Administrative Order, no application to permit an existing dam has been received by DES, from either Mr. Cavacco or the Town.

#### **D. DETERMINATION OF VIOLATIONS**

1. Mr. Robert Cavacco, Sr., and the Town of Chichester as co-owners of the dam have violated RSA 482:11-a by failing to maintain the dam to prevent it from becoming a "dam in disrepair".

2. Mr. Robert Cavacco, Sr., and the Town of Chichester as co-owners of the dam have violated RSA 482:5 by failing to submit an application to permit the Marsh Pond Dam.

### E. ORDER

Based on the above findings, DES hereby orders Mr. Cavacco and the Town of Chichester as follows:

1. **By September 1, 2005** register the Marsh Pond Dam as required by RSA 482:5 with all appropriate information associated with the application. Submit a plan for monitoring the Dam on a frequent basis and during storm events. The plan, when approved by DES, will remain in place until compliance with items E.2 through E.4 (Dam reconstruction) **OR** E.5 through E.7 (Dam removal) of this Order has been achieved.

**If Mr. Cavacco and/or the Town of Chichester elect to repair the Marsh Pond Dam, the parties must address Item E.2 through E.4, below:**

2. **By November 1, 2005**, retain the services of a Professional Engineer licensed in the State of New Hampshire to investigate the repair/reconstruction of the dam. Supply documentation to DES indicating that a Professional Engineer has been employed.

3. **By April 1, 2006**, submit design plans, specifications, and any required DES permit applications for the reconstruction of the Marsh Pond Dam to meet current DES standards for a Class A dam.

4. **By November 1, 2006**, complete the reconstruction of the dam in accordance with the approved plans, specifications, and permit conditions.

**If Mr. Cavacco and/or the Town of Chichester elect to remove the Marsh Pond Dam, then the parties must address Item E.5 and E.7, below:**

5. **By November 1, 2005**, retain the services of a Professional Engineer licensed in the State of New Hampshire to investigate the removal of the dam. Supply documentation, to DES, indicating that a Professional Engineer has been employed.

6. **By April 1, 2006**, submit design plans, specifications and any required DES permit applications for the removal of the Marsh Pond Dam.

7. **By November 1, 2006**, remove the dam in accordance with the approved plans, specifications, and permit conditions.

Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Dale F. Guinn, P.E., Dam Safety Engineer  
DES Water Division  
P.O. Box 95, Concord, NH 03302-0095  
Fax: (603) 271-7894, E-mail: dguinn@des.state.nh.us

#### F. APPEAL

Any person aggrieved by this Order may appeal the Order to the Water Council by filing an appeal that meets the requirements specified in Env-WC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve Mr. Robert Cavacco, Sr., and/or the Town of Chichester of the obligation to comply with the Order.

#### G. OTHER PROVISIONS

Please note that RSA 482:89 provides for administrative fines, civil and criminal penalties for the violations noted in this Order. DES will continue to monitor the Owner's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Merrimack County Registry of Deeds so as to run with the land.

**COPY**

Harry T. Stewart, P.E., Director  
Water Division

**COPY**

Michael P. Nolin, Commissioner

**MERRIMACK COUNTY RECORDS**

*Kath L. Gray* CPO, Register

Certified Mail/RRR: 7000 1670 0000 0588 6295  
Certified Mail/RRR: 7000 1670 0000 0588 6301

cc: Gretchen Hamel, DES Legal Unit  
Public Information Officer, DES PIC Office  
NH AGO